

Robert L. Hyde, Esq. (SBN: 227183)
 bob@westcoastlitigation.com
 Joshua B. Swigart, Esq. (SBN: 225557)
 josh@westcoastlitigation.com
Hyde & Swigart
 411 Camino Del Rio South, Suite 301
 San Diego, CA 92108-3551
 Telephone: (619) 233-7770
 Facsimile: (619) 297-1022

Attorneys for the Plaintiffs

FILED

2009 MAR -2 PM 4:28

CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY: KIR DEPUTY

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

Vanessa S. Allen, on behalf of
 herself and all others similarly
 situated

Plaintiffs,

v.

Rickenbacker Collection Services

Case Number **09CV0410 L**

**[Class Action] Complaint for
 Damages and for Damages and
 Injunctive Relief Pursuant to 47
 U.S.C. § 227 *Et Seq.* (Telephone
 Consumer Protection Act)**

Jury Trial Demanded

INTRODUCTION

1. Vanessa S. Allen, (Plaintiff), through her attorneys, brings this action for damages, and any other available legal or equitable remedies, resulting from the illegal actions of Rickenbacker Collection Services, ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy.

ORIGINAL

2. Plaintiffs make these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiffs allege on personal knowledge.

3. Unless otherwise stated, Plaintiffs allege that any violations by Defendant were knowing and intentional, and that Defendant did not maintain procedures reasonably adapted to avoid any such violation.

JURISDICTION AND VENUE

4. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will result in at least one class member belonging to a different state. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

5. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events giving rise to Plaintiff's causes of action against Defendant occurred within the State of California and the County of San Diego.

PARTIES

6. Plaintiff is, and at all times mentioned herein was, an individual citizen of the State of California, and resident of the County of San Diego.

7. Defendant is, and at all times mentioned herein was, a business whose primary address is 15005 Concord Circle, Morgan Hill, CA 95037, and is a nation-wide collection agency.

FACTUAL ALLEGATIONS

8. At all times relevant, Plaintiff was an individual residing within the State of California. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (10).
9. Defendant is, and at all times mentioned herein was, a business and a "person," as defined by 47 U.S.C. § 153 (10).
10. At all times relevant Defendant conducted business in the State of California and in the County of San Diego.
11. Prior to the date this Complaint was filed, but sometime after four years prior to the date this Complaint was filed, Plaintiff telephoned Defendant using her cellular telephone, and spoke with a representative of Defendant.
12. At this time, and without the knowledge or consent of Plaintiff, Defendant "trapped" Plaintiff's telephone number for future use, by notating the number on its "Caller ID" system, or through similar electronic means.
13. Subsequently, on multiple occasions over numerous days, Defendant contacted Plaintiff on Plaintiff's cellular telephone via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227 (a)(1).
14. During these telephone calls Defendant used "an artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227 (b)(1)(A).
15. The telephone number Defendant called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).
16. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
17. Plaintiff did not provide express consent to receive calls on Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).
18. These telephone calls by Defendant to Plaintiff on her cellular telephone were in violation of 47 U.S.C. § 227(b)(1).

FACTUAL ALLEGATIONS

19. Plaintiff brings this action on behalf of herself and on behalf of and all others similarly situated ("The Class and The Subclass").
20. Plaintiff represents, and is a member of, "The Class," consisting of all persons within the United States who received any telephone call from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint.
21. Plaintiff represents, and is a member of, "The Class," consisting of all persons within the United States who received any telephone call from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, within the four years prior to the filing of this Complaint.
22. Plaintiff also represents, and is a member of, "The Subclass," consisting of all persons within the United States who received any telephone call from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, and such Subclass member had not provided their cellular telephone number to Defendant's assignee(s) – the original creditor(s) for whom Defendant was attempting to collect a debt with the cellular telephone call – in any application for services or credit, within the four years prior to the filing of this Complaint.
23. Defendant, its employees and agents are excluded from The Class and The Subclass. Plaintiff does not know the number of members in The Class and The Subclass, but believes The Class and The Subclass Members number in the tens of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

1 24. Plaintiff and members of The Class and The Subclass were harmed by the acts
2 of Defendant in at least the following ways:

3 (i) Defendant illegally contacted Plaintiff and Class and The Subclass
4 members via their cellular telephones thereby causing Plaintiff and Class
5 and Subclass members to incur certain cellular telephone charges or
6 reduce cellular telephone time for which Plaintiff and Class and Subclass
7 members previously paid, by having to retrieve or administer messages
8 left by Defendant during those illegal calls, and invading the privacy of
9 said Plaintiff and Class and Subclass members. Plaintiff and The Class
10 and Subclass were damaged thereby.

11 25. This suit seeks only damages and injunctive relief for recovery of economic
12 injury on behalf of The Class and The Subclass and it expressly is not
13 intended to request any recovery for personal injury and claims related
14 thereto. Plaintiff reserves the right to expand The Class and The Subclass
15 definitions to seek recovery on behalf of additional persons as warranted as
16 facts are learned in further investigation and discovery.

17 26. The joinder of the Class and Subclass members is impractical and the
18 disposition of their claims in the Class action will provide substantial benefits
19 both to the parties and to the court. The Class and The Subclass can be
20 identified through Defendant's records.

21 27. There is a well-defined community of interest in the questions of law and fact
22 involved affecting the parties to be represented. The questions of law and fact
23 to the Class and Subclass predominate over questions which may affect
24 individual Class and Subclass members, including the following:

25 a. Whether, within the four years prior to the filing of this Complaint,
26 Defendant made any call (other than a call made for emergency purposes
27 or made with the prior express consent of the called party) to a Class
28 member using any automatic telephone dialing system or an artificial or

prerecorded voice to any telephone number assigned to a cellular telephone service.

b. Whether, within the four years prior to the filing of this Complaint, Defendant made any call (other than a call made for emergency purposes or made with the prior express consent of the called party) to the Subclass member using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service and such Subclass member had not provided their cellular telephone number to Defendant's assignee(s), the original creditor(s) for whom Defendant was attempting to collect a debt with the cellular telephone call, in any application for services or credit.

c. Whether Plaintiff and the Class and Subclass were damaged thereby, and the extent of damages for such violation; and

d. Whether Defendant should be enjoined from engaging in such conduct in the future.

28. As a person that received numerous calls using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's express prior consent, and as a person that has never provided her cellular telephone number to Defendant's assignee(s) of the debt for which Defendant was attempting to collect, in any application for credit or services, Plaintiff is asserting claims that are typical of the Class and Subclass. Plaintiff will fairly and adequately represent and protect the interests of the Class and Subclass in that Plaintiff has no interests antagonistic to any member of the Class and Subclass.

29. Plaintiff and the members of the Class and Subclass have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class and Subclass will continue to face the potential for irreparable harm. In addition, these violations of law will be

1 allowed to proceed without remedy and Defendant will likely continue such
2 illegal conduct. Because of the size of the individual Class and Subclass
3 member's claims, few, if any, Class and Subclass members could afford to
4 seek legal redress for the wrongs complained of herein.

5 30. Plaintiff has retained counsel experienced in handling class action claims and
6 claims involving violations of the Telephone Consumer Protection Act.

7 31. A class action is a superior method for the fair and efficient adjudication of
8 this controversy. Class-wide damages are essential to induce Defendant to
9 comply with federal and California law. The interest of Class members in
10 individually controlling the prosecution of separate claims against Defendant
11 is small because the maximum statutory damages in an individual action for
12 violation of privacy are minimal. Management of these claims is likely to
13 present significantly fewer difficulties than those presented in many class
14 claims.

15 32. Defendant has acted on grounds generally applicable to the Class and
16 Subclass, thereby making appropriate final injunctive relief and
17 corresponding declaratory relief with respect to the Class and Subclass as a
18 whole.

19 CAUSES OF ACTION

20 COUNT I

21 NEGLIGENT VIOLATIONS OF THE TCPA

22 47 U.S.C. § 227 ET SEQ.

23 33. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 34. The foregoing acts and omissions of Defendant constitute numerous and
26 multiple negligent violations of the TCPA, including but not limited to each
27 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
28

- 1 35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
2 Plaintiff and the Class and Subclass Members are entitled to an award of
3 \$500.00 in statutory damages, for each and every violation, pursuant to 47
4 U.S.C. § 227(b)(3)(B).
- 5 36. Plaintiff and the Class and Subclass Members are also entitled to and seek
6 injunctive relief prohibiting such conduct in the future.

7 **COUNT II**

8 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA**

9 **47 U.S.C. § 227 ET SEQ.**

- 10 37. Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.
- 12 38. The foregoing acts and omissions of Defendant constitute numerous and
13 multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. §
15 227 et seq.
- 16 39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
17 227 et seq., Plaintiff and each of the Class and Subclass Members are entitled
18 to treble damages, as provided by statute, up to \$1,500.00, for each and every
19 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 20 40. Plaintiff and the Class and Subclass Members are also entitled to and seek
21 injunctive relief prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and The
24 Class and Subclassmembers the following relief against Defendant:

25
26
27
28

COUNT I

NEGLIGENT VIOLATION OF THE TCPA

47 U.S.C. § 227 ET SEQ.

41. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class and Subclass Member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

COUNT II

**KNOWING AND/OR WILLFUL VIOLATION
OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

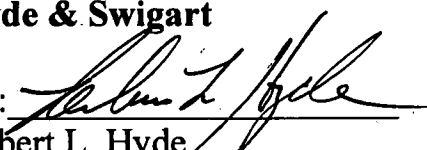
43. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class and Subclass Member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
44. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

TRIAL BY JURY

45. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Date: 2/20/09

Hyde & Swigart

By: 
Robert L. Hyde
Attorneys for the Plaintiffs

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

Vanessa S. Allen, on Behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Rickenbacker Collection Services 2009 MAR -2 PH 4: 29

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'09 CV 0410 L POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land and Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

U.S.C. § 227 et seq

Brief description of cause:

ICPA

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

ORIGINAL

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

160602 - MB
* * C O P Y * *
March 02, 2009
16:34:33

Civ Fil Non-Pris

USAO #: 09CV0410 CIVIL FILING
Judge..: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: 2905

Total-> \$350.00

FROM: VANESSA S ALLEN VS
RICKENBACKER COLLECTION SERVIC